TESTIMONY OF CHAIRMAN DERON MARQUEZ
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BEFORE THE COMMITTEE ON RESOURCES

OVERSIGHT HEARING ON "THE SECOND DISCUSSION DRAFT OF LEGISLATION REGARDING OFF-RESERVATION INDIAN GAMING"

November 9, 2005

Chairman Pombo, Ranking Member Rahall, members of the House Resources Committee, I am honored to be invited to testify before this Committee on the difficult issue of off-reservation land acquisitions for gaming purposes. Chairman Pombo, thank you for releasing this second discussion draft for comment prior to introducing formal legislation. I appreciate the respect you have shown the tribes.

As I stated before this Committee in July of 2004, certain of these proposed land acquisitions to build new casinos threaten the long-term viability of tribal government gaming. The efforts of unscrupulous developers to match economically depressed non-Indian communities with willing tribes to acquire lands far from the willing tribes' existing lands -- also called "reservation shopping" -- has caused a backlash against tribes by the general public. Often the lands sought for acquisition are within the ancestral homelands of other tribes, leading to enormous tensions between tribes.

In California, there is a remarkable spin-off phenomenon to reservation shopping. The Governor's office now picks the developers and tribes it wants to deal with and points them to willing towns for gaming deals. In these instances, reservation shopping has turned into "tribe shopping." This is occurring on San Manuel's ancestral lands, where Big Lagoon and Los Coyotes seek land in Barstow to establish a reservation and build casinos. Another tribe with ancestral ties to Barstow, the Chemehuevi, who San Manuel would not oppose, is not a part of the Governor's deal.

One difficult question is what Congress should do, if anything, to address this issue. Unfortunately, Indian country is not of one mind. I, like other tribal leaders from across the country, would greatly prefer to avoid the inherent risks in the political process of amending the Indian Gaming Regulatory Act. It would be preferable to address this problem through administrative processes or inter-tribal protocols. But the Interior Department has interpreted IGRA's Section 20 two-part determination to not allow the Secretary to consider ancestral ties to land. Well-heeled developers persist in pouring millions of dollars into seeing these projects through, including the real and ongoing threat to San Manuel ancestral lands. These alternatives no longer appear to be viable solutions to a growing problem.

In searching for solutions, San Manuel has worked with other tribes from across the country who share a common concern with the practice of reservation shopping. We have listened to the voices of other non-tribal entities who also are concerned with this

practice. With advice from other tribes, San Manuel believes that federal legislation addressing reservation shopping should do four things:

1. Amend the two-part determination to require the Secretary to make an affirmative finding that a proposed off-reservation acquisition would not have a detrimental impact on nearby tribes.

Under the current law, the Secretary is required to consult with nearby tribes but not affirmatively determine that those nearby tribes would not be harmed by the proposed acquisition.

2. Require that lands proposed for acquisition under the two-part determination be within the petitioning tribe's ancestral lands.

The second discussion draft requires a newly recognized, restored, or landless tribe to have a "primary geographic, social, and historical nexus to the land" when determining gaming eligibility of those lands. San Manuel believes this is an adequate definition for determining ancestral lands ties.

3. For gaming purposes, require state legislatures, not governors alone, to concur with acquisitions under the two-part determination.

This could be accomplished by replacing the term "Governor" with "State" in the two-part determination.

4. Finally, prohibit crossing state lines into areas where the tribe has no existing lands.

Crossing state lines has been the source of much inter-tribal tension and negative state government reaction and interaction.

The second discussion draft reflects, in part, these principles. I have three general concerns about this draft, with recommendations for improving it before it is introduced as a formal bill.

First, eliminating the two-part determination altogether would deprive tribes seeking to acquire lands near their existing reservations and within their ancestral territory the opportunity to legitimately improve their situations. There are instances in which tribes are seeking to accomplish this today. In my view, this is not reservation shopping. Therefore, San Manuel recommends a "mend it, don't end it" approach to the two-part determination. Apply the new requirements in the second discussion draft for newly recognized, restored, and landless tribes to an amended two-part determination.

Second, the requirement of a local referendum would be a shift in federal Indian law and policy, giving local communities unprecedented intrusion into the trust relationship between the United States and the tribes. We understand that not all counties have

referenda processes. As I mentioned earlier, San Manuel supports State concurrence of a two-part determination acquisition, not simply gubernatorial approval.

Third, the on-reservation economic development zone could have unintended consequences on the delicate balance reached in many tribal-state gaming compacts. It may be that such a provision should address tribe-specific situations rather than create a nationally-applicable rule.

Thank you for this opportunity. I would be pleased to answer any questions you have.